

DOCKET FILE COPY ORIGINAL

EX PARTE OR LATE FILED

RECEIVED

NOV. - 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

LAW OFFICES
GINSBURG, FELDMAN AND BRESS
CHARTERED
1250 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 637-9000

CORRESPONDENT OFFICE
9, RUE BOISSY D'ANGLAS
75008 PARIS, FRANCE

ANN BAVENDER
ASSOCIATE
(202) 637-9027

TELECOPIER (202) 637-9195
TELEX 4938614

November 9, 1993

HAND DELIVERED

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Notice - MM Docket 92-266

Dear Mr. Caton:

In accordance with Section 1.1200 et. seq. of the Commission's rules, this is to advise that on Tuesday, November 9, 1993, Peter O. Price, President of Liberty Cable Company, Inc. ("Liberty") and Henry M. Rivera, Esq. and Ann Bavender, Esq., Ginsburg, Feldman and Bress, Chartered, met with Roy J. Stewart, William H. Johnson and Alexandra Wilson of the Mass Media Bureau to discuss issues in this proceeding.

The discussion involved presenting Liberty's position on cable rate regulation. The attachment to this Ex Parte Notice was used in that discussion.

A copy of this Ex Parte Notice was filed with the Commission and delivered to all of the above-named Commission personnel on November 9, 1993.

Sincerely,

Henry M. Rivera
Henry M. Rivera

Attachment

cc: Roy J. Stewart
William H. Johnson
Alexandra Wilson

No. of Copies rec'd
List ABCDE

841

RECEIVED

NOV - 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

LIBERTY CABLE COMPANY, INC.

**575 Madison Avenue
New York, NY 10022
212-891-7771**

CABLE RATE REGULATION

MM DOCKET 92-266

FCC SHOULD NOT EXEMPT MULTIPLE DWELLING UNITS ("MDUs") FROM THE UNIFORM RATE REQUIREMENT

- ▶ **SEVERAL CABLE OPERATORS HAVE ASKED THE FCC TO EXEMPT MDUs FROM THE UNIFORM RATE REQUIREMENT**
 - These cable operators wish to offer individually negotiated discounts to MDUs whose residents are considering switching from cable service to a competitor's service.
 - The level of the discount would vary (building by building) depending on the rate offered to the MDU by the cable system's competitor.
- ▶ **LIBERTY HAS PROVIDED CLEAR EVIDENCE IN THIS PROCEEDING THAT ITS FRANCHISED CABLE COMPETITOR, TIME WARNER, HAS USED NON-UNIFORM RATES IN A PREDATORY MANNER TO PRECLUDE LIBERTY FROM EXPANDING ITS SMATV OPERATIONS AND COMPETE MEANINGFULLY WITH TIME WARNER**
 - Each time Liberty has approached a MDU, hotel or institutional user to interest it in switching to Liberty's service, Time Warner has offered the MDU, hotel or institution a rate lower than Liberty's rate.
 - The lower rate was at least 25% lower than Time Warner's normal rate.
 - Many hotels were told that Time Warner would do anything it took (i.e., lower its rate to whatever level was necessary) to keep the hotel as a customer.
 - Even after the FCC adopted rate regulations, Time Warner was still offering bulk discounts to MDUs in a predatory manner (i.e., only to those buildings considering switching to Liberty's service).

- ▶ CONGRESS INTENDED THAT COMPETITION BE FOSTERED AND NURTURED AND THAT THE UNIFORM RATE REQUIREMENT PRECLUDE PREDATORY PRICING PRACTICES WHICH REDUCE THE NUMBER OF COMPETITORS
 - The purpose of the requirement is to foster competition to cable.
 - Contrary to the claims made by cable operators in their petitions for reconsideration, no competition yet exists in the MDU market. For example, Liberty, which believes it is the only SMATV operator attempting to compete directly with cable, has 12,000 subscribers in MDUs in Manhattan while its competitor, Time Warner, has approximately 585,000 subscribers in MDUs.
 - While the cable operators state they want only to meet, not undercut, the rates offered by their competitors, the result will be to drive out competition -- exactly what Congress intended the uniform rate requirement to preclude.
 - Either undercutting or meeting prices of competitors would preclude competitors from gaining a foothold.

Liberty Cable Company, Inc.